

**Citizen Trade Policy Commission
Water Resources Planning Committee
International Trade Agreements and Ground Water Regulations
Public Hearing
State House Room 228
Augusta, Maine
October 15, 2009
Summary**

Introduction to the hearing by Robert G. Marvinney, State Geologist.

Linda Pistner, Deputy Chief Attorney General, provided an overview of Maine's legal setting for ground water and an outline of the current regulations that govern the withdrawal of ground water.

Sarah Bigney, Commission member, outlined the major international trade agreements and potential impact to state and federal sovereignty. She provided several examples from cases in other states.

David Webster, Maine Representative from District 106, reviewed Resolve 132 that initiated this analysis of the potential impacts of international trade agreements on the state's ability to regulate ground water withdrawals.

Groups

Shelly Golbiel, Chairperson, Protecting Our Water and Wildlife Resources (POWWR), a grassroots organization founded in 2007: The organization was founded by the townspeople of Shapleigh and Newfield to raise awareness of the water testing by Poland Spring, a division of Nestle Waters North America. She related her town's experience in dealing with potential ground water extraction by Poland Spring. Ms. Golbiel stated that the already-existing local and state-level water laws will not hold in court in their current state. Ms. Golbiel used the Maine shoe industry as an example of the previous statement. The state needs to take lessons from the past and think about future generations. The chair of the POWWR recommended trade and investment agreement reform as well as stricter provisions on policies.

Martin and Barbara Britten, POWWR: The Brittens specifically called for water resources to be carved out of international trade agreements and that Maine's ground water be placed in the public trust. Ms. Britten is concerned that NAFTA and GATT commodify water resources on a global scale. Ms. Britten said, "With the world water crisis and global international agreements, Maine's water is left vulnerable." Ms. Britten also noted that other states, like Vermont, New Hampshire and Massachusetts have recognized the limitation of their water resources and made efforts to protect them. She expressed concern that under NAFTA, Maine is required to give all NAFTA signers the same benefits and deals as the United States. Both of the Brittens seconded the recommendations made by Mrs. Golbiel.

Ben Chin, Maine Peoples' Alliance: The Alliance focuses on laws that benefit the population's well-being. The availability of water for drinking and recreation is of particular concern as it pertains to the well-being of the people of Maine. Mr. Chin stated that the provisions of NAFTA give foreign investors rights and liberties that could potentially "trump" state and national sovereignty. The organization has specific concerns with Chapter 11 of NAFTA. Under this Chapter, for example, the Kids Safe Law could be challenged as too burdensome to a company. With the belief that the power to make legal decisions should be made in Maine and not in international tribunals, Maine People's Alliance also supports the removal of water from international trade agreements.

Bonnie Preston, The Alliance for Democracy: The Alliance for Democracy had specific issues with Article 6 of the GATS of the World Trade Organization, namely Domestic Regulation. Local and state regulations such as "goals to ensure qualifications and standards" could be deemed too burdensome if they hindered a company's profits or services. "National measures shouldn't hinder" these profits or services in anyway. The organization is concerned that basic human needs and drinking water standards could be determined too burdensome. The United States has opposed changes to the agreements under the World Trade Organization and the organization noted that there have been no new disciplines or changes made to article 6.

Stephan Donnell and Daphne Loring, Maine Fair Trade: Maine Fair Trade is comprised of 55 member organizations. Both Donnell and Loring reiterated risks of international trade agreements, namely that they threaten state sovereignty and circumvent local policies that are meant to benefit the public, like those pertaining to the environment and public health. They also recommended that water be carved out of all international trade agreements and specifically the GATS, along with the establishment of investment disclosure, and the protection of sovereignty and local control by enforcing the hearing of conflicts in domestic courts. Ms. Loring also described the experience of Bangor's sister city in El Salvador – Carasque. PacificRim, a Canadian corporation (Canada is not a signatory to CAFTA), used a U.S. subsidiary to sue El Salvador over permits to mine gold. Mr. Donnell and Ms. Loring used this as an example of potential abuses of the international trade agreements to which Maine may be vulnerable.

Betsy Anderson, Steering Committee of Save Our Water from Wells: Ms. Anderson seconded POWWR's concern that if challenged through international trade agreements through an international tribunal, Maine would not succeed. Water is an essential element and Ms. Anderson, along with her organization, does not think it should be treated like oil or pharmaceuticals. Save Our Water also calls for the removal of water from all free trade and investment agreements, specifically the GATS. The economy depends on a clean and safe environment. Ms. Anderson hopes that the legislature will "think globally and act locally, keeping the "Maine" in Maine by refusing to be enslaved by Nestle."

Herbert Hoffman, Ogunquit, co-chairman of Save Our Water: Mr. Hoffman called for the abolishment of absolute dominion. He believes that the role of water is too precious not to be in a public trust. Mr. Hoffman is concerned that international corporations have been given rights, constitutional and otherwise, similar to those of individual people. His concern is that this "person-status" gives companies the potential to make decisions outside of the local, state and even federal domain. He called for Maine to defend its water.

Emily Posner, from Sheepscot River represented the Defending Water for Life Campaign: This organization also recommends that water be carved out of the GATS and all trade agreements. Ms. Posner expressed her organizations' concerns r specifically with articles 11 and 20 of GATT. Article 20 allows for a country to restrict access to a resource in order to protect human life and conserve the environment. The Defending Water for Life Campaign focuses on the protection of life and health and question the overall root cause of the global shortage of water which seems to have resulted in Maine's water becoming such a desired commodity. The Campaign is also concerned about the effects of bottled water, for example the cancerous effects of plastic manufacturing, aquifer destruction, and effects on other organisms besides humans. Ms. Posner also wanted it to be clear that Maine's water has yet to be determined inexhaustible, with particular concern for the world water shortage and the impacts of climate change.

Economic Supporters

Chip Ahrens, representing Poland Spring, part of the international Nestle company: Mr. Ahrens made it clear that the GATT specifically regulated the trade of *goods* (emphasis from hearing material). Groundwater, or water in its natural state, is not technically regulated under the GATT. Bottled water is, however, regulated by the GATT. Mr. Ahrens also wanted to make that distinction that any disputes over WTO agreements would be heard member nation versus member nation. The WTO also cannot rewrite laws or order any state to change their regulations. International Investment agreements (IIA) under NAFTA, according to Mr. Ahrens, are different from the WTO agreements. The United States, not individual states, can initiate cases. The United States has yet to lose a IIA challenge, although the IIA outcome do not include rewriting any regulations. "Buy American" procurement provisions, "Mad Cow" disease quarantines, and others have all been upheld. IIA only consider monetary damages. Mr. Ahrens also made it clear that nondiscriminatory regulations for public purposes enacted through due process cannot constitute an expropriation.

Chris Jackson, The Maine State Chamber of Commerce: . The Chamber represents at least five-thousand businesses. Mr. Jackson noted that water extraction is already heavily regulated in Maine. The Chamber is also concerned that the state needs more foreign investment. For every single growing local business, there are four or five that are struggling. Unemployment as increased 50% statewide to about 8.5% statewide, and bankruptcies have increased 33%. The Chamber of Commerce noted that Poland Spring employs about 800 people in-state and pays vendors and contractors. The official position of the Chamber is that water replenishes naturally and these types of businesses should be encouraged as long as they are sustainable and reasonable.

Rick Knowlton, Vice President of Aqua Maine: Aqua Maine, a division of Aqua America, an investor- owned company, has served twenty municipalities, some for over fifty years.. Mr. Knowlton expressed concerns with Mr. Waren's draft report and reviewed existing regulations. There is already a bulk water law. Mr. Knowlton referred to a legal article by attorney Scott Slater. He also stated that water is a property under the absolute dominion rule and therefore the GATT and other international trade agreements do not apply. Mr. Knowlton also referred to the Public Utilities Commission and Title 35A which restricts return on a company's investment. Aqua Maine believes, similar to the Chamber of Commerce, that the focus should be on reasonable regulations of water resources before water can be considered goods, products, or services regulated by GATT.

Individuals

Denise Carpenter, Newfield planning board member, a woodlot owner and cattle farmer: Ms. Carpenter reiterated the same information as Shelly Golbiel. . All resources are interrelated. Ms. Carpenter referred to the borders being closed to Mad Cow importation and international companies owning logging in Northern Maine as examples of the effects international policies and agreements have at the state and local levels. She recommends that town-level provisions should be stricter than the state, or "life as we know it will change."

Charles Mullins, Shapleigh: Mr. Mullins does not want domestic regulations to be subject to international policy and believes "there will only be political compromise if the legislature lets it." The goal of the state should be to represent the needs of the people.

Gloria Dyer, Newfield: Ms. Dyer reiterated Hoffman's concern over the constitutional rights given to companies, the threat to state sovereignty, and lack of transparency. Investor's rights give companies power to challenge policies and agencies that interfere with economic profits (including local businesses). In the Newfield-Nestle case, Nestle acted for three years without public notice. Dyer called for laws that would protect Maine's state sovereignty. She also called for water to be removed from the GATT and placed in a public trust for future generations. She recommended that states should be represented in NAFTA and CAFTA negotiations if they are to be affected, directly or indirectly.

Rick Burns: Mr. Burns is an advocate for democracy, private property and fair trade. He noted that there are an increased number of citizens fighting multinationals. Mr. Burns came to the hearing as a supporter for the townspeople of Newfield and Shapleigh. He believes that companies are granted a privilege to use resources and should not undermine municipal ordinances. He also stated his belief that absolute dominion is a product of times past that has eroded and needs to be abolished or rebuilt. "Reasonable Use" has a much better sound than "Absolute Dominion" Mr. Burns also referenced the court case of *Lucas vs. South Carolina Coastal Council* as an example in which regulations were established and businesses had to expect that subsequent regulations would affect the way they do business. He also quoted a former Attorney General, who stated that international tribunals threatened democracy. Consider the rights based ordinance such as that passed by Shapleigh.

Eileen Hennessey: Ms. Hennessey is simply concerned for all natural resources. Everything needs water to survive. Ms. Hennessey is particularly concerned that the 2006 installment of eminent domain allows a company to come onto private land and take ground water for profit.. Water should not be a commodity. She further reiterated the recommendation for the removal of water from the GATT and the creation of a public trust for the natural resource. Ms. Hennessey also noted that foreign companies control Maine's wood and electricity.

Jim Freeman, Verona Island: Mr. Freeman raised awareness for the East-West Highway, a 1000ft swath including road, rail, a utility and water pipeline. Maine would be exporting water in pipes. Gravel would go to Europe for roads, and trees would go to Europe for wood pellets to lower carbon dioxide emissions. Both would leave Maine with no value added. This is another example of already-existing economic relationships between Maine and international companies.

Grace Bradley: Ms. Bradley emphasized her concern over the legislature's "potential overconfidence or complacency." Ms.. Bradley hopes the legislature will not lose sight of the larger picture, the broader and long-term implications the GATT for Maine. She referred to her own personal experience working with the GATS in Mexico.